UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF CALIFORNIA

ENTERED IN CIVIL DOCKET MAY 24, 1991

LILLIAN MCCOVEY SHERMOEN et al.,
Plaintiffs,

vs.

UNITED STATES OF AMERICA, et al.,
Defendants.

and

DALE RISLING, SR., ET AL.,
Intervenor-Defendants.

No. C-90-2460 WHO
MEMORANDUM OPINION AND ORDER

In this action, plaintiffs, some seventy native American Indians and The Coast Indian Community of Yurok Indians of Resighini Rancheria, a federally recognized tribe, seek a judicial declaration that the Hoopa-Yurok Settlement Act, 25 U.S.C. §§ 1300i-1300i-11, unconstitutionally infringes their rights to freely associate in matters of political concern, violates their rights under the Due Process, Takings and Equal Protection clauses of the Fifth Amendment to the Constitution of the United States, and exceeds the power granted to Congress by the Constitution to regulate matters concerning Indian affairs. Defendants[1] and intervenor defendants, Dale Risling, Sr., Clifford Lyle Marshall, Robert D. Hostler, and

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[1]Defendants are the United States of America and the United States Department of Interior, Bureau of Indian Affairs, and in their official capacities, Manuel Lujan, Secretary of the Interior, Eddie Brown, Assistant Secretary of the Interior/Indian Affairs; Ronald M. Jaeger, Area Director, Sacramento Area Office, Bureau of Indian Affairs; and Karole Overberg, Superintendent, Northern California Agency, Bureau of Indian Affairs.

John M. Scott (collectively "defendants"), have moved the Court pursuant to Rule 12(b)(7) of the Federal Rules of Civil Procedure to dismiss the action for failure to join indispensable parties under Rule 19 of the Federal Rules of Civil Procedure.[2]

The Court, having considered the pleadings and oral argument of counsel, hereby grants, for the reasons discussed below, defendants' motion and dismissed this action with prejudice.

I.

On October 31, 1988, Congress enacted the Hoopa-Yurok Settlement Act (the "Act") in an attempt to settle decades of bitter and protracted litigation involving the efforts of various individuals and tribes to gain control over the Hoopa Valley Reservation ("Hoopa Valley"), a federally created reservation along the banks of the Trinity and Klamath Rivers. Congress passed the Act only after extensive hearings and committee meetings at which members of all affected tribes participated. In fact, plaintiffs' lawyer participated in, and testified during, the hearings.

By the terms of the Act, Congress ratified and confirmed the Hoopa Valley Tribe as federally recognized and organized, 25 U.S.C. § 1300i-7, and affirmed the Karuk Tribe as federally recognized and organized. § 1300i (b)(7). The Act also recognizes and authorized the Yurok Tribe, which previously had been recognized but not organized. § 1300i-8. The Act also partitions the existing Hoopa Valley Reservation into the Hoopa Valley Reservation and the Yurok Reservation. § 1300i-1. Finally, the Act creates the Hoopa-Yurok Settlement Roll under which those individuals who qualify for inclusion on the Roll will receive compensation for past grievances. §§ 1300i-3,4.

II.

Defendants argue that both the Hoopa Valley Tribe and the

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[2]Defendants also have moved the Court to dismiss the action pursuant to Rules 12(b)(1) and 12(b)(6) of the Federal Rules of Civil Procedure. But given the Court's finding that the action must be dismissed for failure to join indispensable parties, the Court need not address defendants' 12(b)(1) and 12(b)(6) motions.

Yurok Tribe are necessary to an adjudication of this action under Rule 19 of the Federal Rules of Civil Procedure. They then argue that because Indian tribes are immune from suit under the doctrine of sovereign immunity, the action must be dismissed. The Court agrees.

Rule 19(a) of the Federal Rules of Civil Procedure provides in relevant part that a person should be joined as a party to an action if:

> (1) in the person's absence complete relief cannot be accorded among those already parties, or (2) the person claims an interest relating to the subject of the action and is so situated that the disposition of the action in the person's absence may (i) as a practical matter impair or impede the person's ability to protect that interest or (ii) leave any of the persons already parties subject to a substantial risk of incurring double, multiple, or otherwise inconsistent obligations by reason of the claimed interest.

In determining whether absent parties are necessary to an action under 19(a), the Court must undertake a two-part analysis and test. *Makah Indian Tribe v. Verity,* 910 F.2d 555, 558 (9th Cir. 1990). In the first part of the test, the Court must determine whether it can grant complete relief to those already parties to the action. Second, the Court must determine whether the absent tribes have legally protected interests in the suit. If the Court finds that the absent parties do have legally protected interests in the action, it must then determine whether those interests will be impaired if the suit proceeds without them being joined. Applying this test to the facts of the instant case, the Court finds that the absent parties are necessary under Rule 19(a).

A.

In the first prong of the test, namely, whether complete relief is possible among those already parties, defendants claim complete relief cannot be given because all dispensable parties are not before the Court. But notwithstanding which parties are or are not before the Court, the Court is able to grant the requested relief. Either the Act is constitutional or it

is not. If the Court finds that the Act is unconstitutional, plaintiffs will have received all the relief for which they prayed. If the Court finds the Act constitutional, then the defendants, as well as the absent parties, who would presumably argue for the Act's constitutionality, would receive all the relief for which they prayed. The presence or absence of any other parties in no way limits the Court's ability to determine the constitutionality of the Act. This is not to say, however, that a finding that the Act is unconstitutional would not adversely affect those not present. It would. But the harm suffered by absent parties is properly analyzed under the second prong of the test and in no way alters the finding that the Court can grant complete relief among those already present.

B.

In the second prong of the test, the Court must determine whether the absent parties have legally protected interests in the outcome of this action.

Plaintiffs argue that the absent parties lack a legally protected interest in this litigation because " '[i]n litigation involving the adjudication of public rights, non-parties who may be adversely affected by a decision in plaintiffs' favor do not have a protectable [sic] interest which would require their joinder under Rule 19.' " Plaintiffs' Response to Defendants' Motions to Dismiss, filed Jan. 3, 1991, at 68 (quoting 3A J. Moore, J. Lucas, G. Grotheer, *Moore's Federal Practice* ¶ 19.07 [2-0] at 1001-101 (1990) (emphasis added). There are, however, two major problems with this argument. The first problem is that the public rights exception to traditional joinder rules is applicable in deciding whether a party is indispensable, not whether they have a legally protected interest. *Makah,* 910 F.2d at 559 n.6 ("Even if the absent tribes were 'necessary' to the Makahs' procedural claims, they would not be 'indispensable' "). It is only after a finding that a party has a legally protected interest in the litigation that a Court seeks to determine whether that party is indispensable to the action. *Id.* at 559.

The second problem with plaintiffs' public rights argument is that the rights plaintiffs seek to enforce are not "public

rights," but rather are personal to plaintiffs. As noted above, plaintiffs challenge the Act on the basis that it unconstitutionally infringes their rights to freely associate in matters of political concern and violates their rights under the Due Process, Takings and Equal Protection clauses of the Fifth Amendment to the Constitution of the United States. These clearly are not public rights. To the extent that plaintiffs challenge what they consider to be the unequal distribution of the Hoopa Valley's assets, they also cannot be said to be asserting public rights. As the court noted in *Makah,* where a plaintiff seeks reallocation of certain assets, the public rights exception to traditional rules of joinder has no efficacy. That having been said, the Court now turns to the determination of whether the absent tribes have legally protected interests in this litigation that might be impaired or impeded by their inability to be joined in this action.

There is no question that the Act creates certain legally protected interests in the absent parties. For example, the Act authorizes the creation of the Yurok Tribe. The Act then grants certain property rights to the newly formed Yurok Tribe, as well as to the existing Hoopa Valley Tribe.[3] It is equally clear that an order of this Court declaring the Act unconstitutional would adversely impact the rights granted to the absent parties by the Act. Thus, plaintiffs' protestations aside, there is no question that the absent parties do have legally protected interests in the outcome of this litigation. The Court next must determine whether these rights will be impaired or impeded by this litigation. *Makah,* 910 F.2d at 558. The Court finds that any such rights undoubtedly will be impaired by this litigation.

One important factor in determining whether an absent party's interest will be impaired is whether that party's interest is adequately represented by one already a party to the action. *Heckman v. United States,* 224 U.S. 413 (1912). As noted in *Makah,* "[t]he United States may adequately represent

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[3]Plaintiffs argue that the Hoopa Valley Tribe should be considered a party to this litigation because certain members of the Tribe are parties. But it is quite clear that the Hoopa Valley Tribe members who are present at appearing in their individual capacities and not as representatives of the tribe.

an Indian tribe unless there is a conflict between the United States and the tribe." 910 F.2d at 558. But the *Makah* court also noted that the federal government may not be able to protect the interest of absent tribes where the interests of those tribes conflict with the interests of tribes that are parties to the action. Just such a situation is present here.

Plaintiffs ask this Court to declare the Act unconstitutional. While the government arguably has as much interest in having the constitutionality of the Act upheld as do the absent parties, it nonetheless is true that the interests of the present and absent tribes are widely divergent. One of plaintiffs' primary complaints in this action is what they consider to be the grossly inequitable partition of the Hoopa Valley Reservation. Thus, a major goal that plaintiffs seek to achieve in this litigation is to have the reservation returned to the state it was in prior to the effective date of the Act. If successful, the effect will be a divestment of property rights that have inured to the benefit of the absent tribes. Thus, because the interests of the tribes conflict so greatly, the Court finds that the government cannot adequately represent the interests of the absent tribes.

The Court finds support for its position in two recent cases, *Wichita & Affiliated Tribes of Oklahoma v. Hodel,* 788 F.2d 765 (D.C. Cir. 1986), and *Kickapoo Tribe of Oklahoma v. Lujan,* 728 F. Supp. 791 (D.D.C. 1990). In *Wichita,* a number of tribes were litigating the rights to certain property held in trust for the tribes by the government. In holding that the action must be dismissed for failure to join indispensable parties, the court noted that "whatever allegiance the government owes to the tribes as trustee, is necessarily split among the three competing tribes involved in the case. This case, therefore, falls squarely under the rule that when 'there is a conflict between the interests of the United States and the interests of Indians, representation of the Indians by the United States is not adequate.' " 788 F.2d at 775 (quoting *Manygoats v. Kleppe,* 558 F.2d 556, 558 (10th Cir. 1977)).

Here, as in *Wichita,* the parties are fighting over a finite parcel of land that the government holds in trust for the Indians. Thus, there is nothing to lead this Court to believe that the government's allegiance in this action is any less split

among the various tribes than was the government's allegiance in *Wichita*.

Kickapoo also provides persuasive authority for the position that the defendants would have the Court adopt. In *Kickapoo*, an Indian tribe brought suit to enjoin the Secretary of the Interior from recognizing and dealing with a newly created independent tribe. Because of the sovereign immunity enjoyed by the challenged tribe, it was not joined in the action. The district court dismissed the action for failure to join the absent tribe finding that it was an indispensable party under Rule 19. In so finding, the court noted that it did not believe that the government could adequately represent the absent parties. While the court did recognize that the government has an interest in defending agency actions and authority with respect to tribal reorginazation, the court held that the absent tribe "has an interest in its own survival, an interest which it is entitled to protect on its own." 728 F.Supp. at 797. The United States Court of Appeals for the Ninth Circuit recently reached the same conclusion in a case with similar facts.

In *Confederated Tribes of the Chehalis Indian Reservation v. Lujan*, 928 F.2d 1496 (9th Cir. 1991), various groups of Indians brought suit against federal officials seeking to enjoin the government from recognizing and dealing with the Quinault Indian Nation (the "Nation") as the governing body of the Quinault Indian Reservation. Because of the sovereign immunity enjoyed by the Nation it was not named as a party to the action. The government then moved to dismiss the action, pursuant to Rule 19, for failure to join an indispensable party. The district court granted the motion finding that the Nation was indeed an indispensable party.

In affirming, the Ninth Circuit explicitly rejected the plaintiff tribes' argument that the government could adequately represent the absent Nation, holding that "the United States cannot adequately represent the Quinault Nation's interest without compromising the trust obligations owed to the plaintiff tribes." *Id.* at 1500.

The Court is persuaded by the analysis in *Confederated Tribes* and *Kickapoo* and finds that the Yurok Tribe, which the Act recognizes and authorizes to organize, similarly has an

overriding interest in its existence that the government cannot adequately represent without compromising the government's trust obligations to the other tribes. Therefore, the Court finds that the absent tribes have legally protected interests in the stake of this litigation that will be impaired in their absence and are, thus, necessary parties under Rule 19(a).

III.

Having so determined, the Court must now "determine whether in equity and good conscience the action should proceed among the parties before it, or should be dismissed, the absent [tribes] being thus regarded ad indispensable." Fed. R. Civ. P. 19(b). To determine whether the absent tribes are indispensable under Rule 19(b), the Rule instructs courts to consider four factors:

> first, to what extent a judgment rendered in the person's absence might be prejudicial to the person or those already parties; second, the extent to which, by protective provisions in the judgment, by the shaping of relief, or other measures, the prejudice can be lessened or avoided; third, whether a judgment rendered in the person's absence will be adequate; fourth, whether the plaintiff will have an adequate remedy if the action is dismissed for nonjoinder.

Id. Applying these factors to the case at bar, the Court finds that the absent tribes are indeed indispensable.

A.

First, with respect to the prejudice the absent tribes will suffer from any adverse judgment, there can be do doubt that the absent tribes will be prejudiced severely if plaintiffs obtain the judgment they seek in this action. As noted above, plaintiffs seek to have the Act declared unconstitutional. Because the Act granted certain property rights in the Hoopa Valley to the absent tribes, any judgment invalidating the Act would necessarily have a deleterious effect on the absent tribes. As the court noted in *Wichita,* "[c]onflicting claims by beneficiaries to a common trust present a textbook example of a case where one party may be severely prejudiced by a

decision in his absence." *Wichita,* 788 F.2d at 774.

Nonetheless, plaintiffs argue that the fact that the absent tribes are free to intervene in this action acts to mitigate any prejudice the absent tribes might suffer. But this contention was expressly rejected by the courts in *Wichita,* 788 F.2d at 775, *Makah,* 910 F.2d at 560, and *Confederated Tribes,* 928 F.2d at 1500. The *Wichita* court noted that to hold to the contrary would "put the tribe[s] to th[e] Hobson's choice between waiving [their] immunity or waiving [their] right not to have a case proceed without [them]." *Wichita,* 788 F.2d at 776.

B.

Second, there is no way that the Court can shape relief so as to lessen or avoid the prejudice to the absent parties. Like the situations presented in both *Makah* and *Wichita,* the interest in the reservation land and resources over which the parties are fighting is of a finite quantity. Plaintiffs seek the return of lands that they contend are unconstitutionally taken by the terms of the Act. This is not a situation where plaintiffs merely seek monetary relief to compensate them for what they contend is an unconstitutional taking; rather, this is an equitable action in which plaintiffs seek to have the land itself returned. Any relief granted to them by the Court would necessarily involve taking away interests in the Hoopa Valley given to the absent tribes by the terms of the Act. Thus, there is no way to shape the relief to lessen or avoid prejudice to the absent tribes.

C.

The third factor the Court must consider under Rule 19(b), whether "a judgment rendered in the [tribes'] absence will be adequate," tips in favor of a finding that the absent tribes are not indispensable because the Court undoubtedly has the power to grant the relief requested by plaintiffs. Nonetheless, as the court in *Wichita* noted"[t]his factor, however, cannot be given dispositive weight when the efficacy of the judgment would be at the cost of absent parties' rights to participate in litigation that critically affect *[sic]* their interests." 788 F.2d at 777.

D.

The fourth and final factor the Court must consider is whether plaintiffs will have an adequate remedy if the action is dismissed. While it is true that dismissal of this action will leave plaintiffs without a forum in which to present a number of their claims,[4] this factor alone does not necessarily bar the Court from dismissing the action. As the court noted in Wichita, just because the plaintiff will not have an alternative forum elsewhere " 'does not mean that an action should proceed solely because the plaintiff otherwise would not have an adequate remedy, as this would be a misconstruction of the rule and would contravene the established doctrine of indispensability.' " *Id.* at 777 (quoting J. Moore, *supra,* ¶ 19.07-2[4] at 19-153 (1984)).

The court then noted that "when a necessary party is immune from suit, there is very little room for balancing of other factors, since this 'may be viewed as one of those interests "compelling by themselves." ' " *Id.* at 777 n. 13 (quoting J. Moore, *supra,* ¶ 19.15 at 19-266 n.6 (1984)). The ninth Circuit, too, has noted that the doctrine of sovereign immunity might very well lead to a situation where a plaintiff is left without a forum in which to bring his claims. *Makah* at 560, *Confederated Tribes,* 928 F.2d at 1500.

Based on the above analysis, the Court finds that the balance of the four factors just discussed tips sharply in favor of finding that the absent tribes are indispensable. Therefore, the Court has no alternative but to dismiss the action pursuant to Rule 12(b)(7) of the Federal Rules of Civil Procedure.

This finding is consonant with both the Ninth Circuit's recent opinion in *Confederated Tribes* and a recent opinion from the Second Circuit, both of which affirmed decisions by district courts finding certain tribes indispensable in situations closely resembling the situation in the case at bar.

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[4]Defendants correctly point out that even if the Court dismisses this action, plaintiffs will still be able to bring an action in the Court of Claims for monetary relief for the allegedly unconstitutional taking of their property. In fact, the Act itself expressly provides for such an action. 25 U.S.C. § 1300i-11(a).

As discussed above, the court in *Confederated Tribes* upheld a district court's determination that a missing tribe was indispensable to the proper adjudication of an attempt to enjoin federal officials from recognizing and dealing with the missing tribe. In so doing, the court concluded that the district court had properly determined that the missing tribe was a party whose interests in the subject of the litigation might be impaired in their absence, and in whose absence the action should not proceed.

In *Fluent v. Salamanca Indian lease Authority,* 928 F.2d 542 (2d Cir. 1991), nearly six hundred lessees challenged the constitutionality of the Seneca Nation Settlement Act of 1990, by which Congress approved the renewal of a number of leases between the lessees and the Seneca Nation of Indians ("Nation") and appropriated $35 Million toward the rental payments. Because of the sovereign immunity enjoyed by the Nation, it was not joined in the action. Finding that resolution of the claims presented by the lessees would impair and impede the Nation's ability to protect its interests created by the Seneca Nation Settlement Act of 1990, the district court dismissed the action pursuant to Rules 19(b) and 12(b)(7) of the Federal Rules of Civil Procedure.

In affirming, the Second Circuit noted that "as the beneficiary of a substantial sum of money from the federal government it is manifest that the Nation has a vital interest in the constitutionality of the 1990 Act." 928 F.2d at 547. The court then held that the district court property concluded that the "paramount importance accorded the doctrine of sovereign immunity under rule 19" justified dismissing the action. Id. To reach that conclusion, the Second Circuit relied on the same cases that the Court discussed above, *Wichita* and *Makah*, as well as a Tenth Circuit case, *Enterprise Management Consultants, Inc. v. United States ex rel. Hodel,* 883 F.2d 890, 894 (10th Cir. 1989) ("[w]hen, as here, a necessary party under Rule 19(a) is immune from suit, 'there is very little room for balancing of other factors' set out in Rule 19(b) . . .") (quoting *Wichita,* 788 F.2d at 777 n.13).

IV.

For the foregoing reasons,

IT IS HEREBY ORDERED that defendants' motion to dismiss this action pursuant to Rules 19 and (12(b)(7) of the Federal Rules of Civil Procedure is hereby GRANTED, and the case dismissed with prejudice.

Dated: May 22, 1991.

William H. Orrick
United States District Judge

APPEARANCES:

FOR PLAINTIFFS: RICHARD B. THIEROLF, JR., ESQ.
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WEDNESDAY, JULY 10, 1991

THE CLERK: Calling Civil 90-2460, Lillian McCovey Shermoen, et al. versus the United States of America.

Counsel, come forward and state your appearances for the record.

MR GREGORY: John Gregory for the Federal defendants, your honor.

MR. SCHLOSSER; Tom Schlosser for the Hoopa defendants.

MR. THIEROLF: Richard Thierolf for the plaintiffs, your honor. Also with me is Curtis Burkey (Phonetic).

THE COURT: I went to great lengths studying your position. After I did that, I had the benefit of your oral argument. And after that, I wrote an opinion. And I worked very hard on the opinion and dismissed the case.

So the case is dismissed with prejudice. And I will tell you the reasons again why: each of the tribes are sovereign tribes. They have sovereign immunity, and they are indispensable parties under Federal Rule of Civil Procedure 19(a) in this action.

It's utterly foolish to think you can get around and cut out the sovereign immunity of the tribes by simply suing tribal officials. Normally, it's quite correct that under this kind of a motion it might be dismissed without prejudice.

But there is a very important exception to that, and the exception is that where there is no possibility of stating a cause of action taking away something over which the tribes have sovereign immunity, it is just a waste of time, not to say your clients' money, to go through the same exercise again. And I decline to do it, and I reaffirm my prior decision.

Now, there is a very good way to make an effort to get that decision changed, and that is to go the United States Court of Appeals for the Ninth Circuit. But as far as I am concerned, I have no problem with it in the slightest. The whole purpose of the lawsuit appears to be to invalidate the Hoopa-Yurok Settlement Act, and this just isn't the way to go about it.

Or perhaps you can go to the Congress. Sometimes you get more from the Congress. So the case has been, and is, and I now dismiss it with prejudice for the third time.

MR. THIEROLF: Your honor, then we will have to appeal, as you suggest.

THE COURT: Of course.

MR. THIEROLF: I understand there is a status conference scheduled today. So can we take this time to address some issues that are relevant to that?

THE COURT: There is no point to having the status conference since the case is dismissed. It's gone.

MR. THIEROLF: One thing I did today is I filed a motion for a temporary restraining order and order to show cause. That was filed about one-thirty today. I have given copies of it to the defendants.

I understand that the rule is that if you are going to seek such relief in the appellate court, you have to first seek it from the district court in conjunction with your filing of the notice of appeal.

THE COURT: The motion is denied. I don't have any problems about that, either.

MR. THIEROLF: So I can tell the Ninth Circuit that we tried?

THE COURT: Yes.

MR. THIEROLF: You will be entering judgment, I assume?

THE COURT: That is normally what follows after a dismissall. Plaintiffs prepare the order and the judgment. And in the meantime let me suggest to you that when you go to the court of appeals that you go prepared to discuss the case of Confederated Tribes against Lujan.

Have you read that case?

MR. THIEROLF: Very definitely, your honor.

THE COURT: It came down April 3rd. Then I don't have to cite it to you. Page 1499 deals with precisely the same question as to indispensable parties. That and the Burlington Northern case are the two main cases.

MR. THIEROLF: We relied on Burlington Northern for the argument that if the tribal officials are present in the case, in fact the tribe is represented and is not indispensable.

THE COURT: As you know, I dealt with that in my opinion and found that your view of that is different from mine and that it's opposite.

All right. Call the next case.

MR. THIEROLF: Your honor, could we have an immediate entry of judgment, like today or tomorrow, or something, so there is no question about the - -

THE COURT: Yes. Then you prepare the form of judgment. And take it up with Mr. Gregory and see that it's approved by him as to form. And lodge it in my chambers. And if I think it's proper, I will have no difficulty signing it.

MR. THIEROLF: Very well, your honor.

(Hearing concluded)

APPENDIX C

RULE 19. JOINDER OF PERSONS NEEDED FOR JUST ADJUDICATION

(a) Persons to Be Joined if Feasible. A person who is subject to service of process and whose joinder will not deprive the court of jurisdiction over the subject matter of the action shall be joined as a party in the action if (1) in the person's absence complete relief cannot be accorded among those already parties, or (2) the person claims an interest relating to the subject of the action and is so situated that the disposition of the action in the person's absence may (i) as a practical matter impair or impede the person's ability to protect that interest or (ii) leave any of the persons already parties subject to a substantial risk of incurring double, multiple, or otherwise inconsistent obligations by reason of the claimed interest. If the person has not been so joined, the court shall order that the person be made a party. If the person should join as a plaintiff but refuses to do so, the person may be made a defendant, or, in a proper case, an involuntary plaintiff. If the joined party objects to venue and joinder of that party would render the venue of the action improper, that party shall be dismissed from the action.

(b) Determination by Court Whenever Joinder Not Feasible. If a person described in subdivision (a) (1)-(2) hereof cannot be made a party, the court shall determine whether in equity and good conscience the action should proceed among the parties before it, or should be dismissed, the absent person being thus regarded as indispensable. The factors to be considered by the court include: first, to what extend a judgment rendered in the person's absence might be prejudicial to the person or those already parties; second, the extent to which, by protective provisions in the judgment, by the shaping of relief, or other measures, the prejudice can be lessened or avoided; third, whether a judgment rendered in the person's absence will be adequate; fourth, whether the plaintiff will have an adequate remedy if the action is dismissed for non- joinder.

(c) Pleading Reasons for Nonjoinder. A pleading asserting a claim for relief shall state the names, if known to the pleader, of any persons as described in subdivision (a)(1)-(2) hereof who are not joined, and the reasons when they are not joined.

(d) Exception of Class Actions. This rule is subject to the provisions of Rule 23.

§ 1300i. Short title and definition

(a) Short title. This Act may be cited as the "Hoopa-Yurok Settlement Act."

(b) Definitions. For the purpose of this Act, the term -

(1) "Escrow funds" means the moneys derived from the joint reservation which are held in trust by the Secretary of the accounts entitled -

(A) "Proceeds of Labor-Hoopa Valley Indians-California 70 percent Fund, account number J52-561-7197";

(B) "Proceeds of Labor-Hoopa Valley Indians-California 30 percent Fund, account number J52-561-7236";

(C) "Proceeds of Klamath River Reservation, California, account number J52-562-7056"'

(D) "Proceeds of Labor-Yurok Indians of Lower Klamath River, California, account number J52-562-7153";

(E) "Proceeds of Labor-Yurok Indians of Upper Klamath River, California, account number J52-562-7154";

(F) "Proceeds of Labor-Hoopa Reservation for Hoopa Valley and Yurok Tribes, account number J52-575-7256"; and

(G) "Klamath River Fisheries, account number 5628000001"

(2) "Hoopa Indian blood" means that degree of ancestry derived from an Indian of the Hunstang, Hupa, Miskut, Redwood, Saiaz, Sermalton, Tish-Tang-Atan, South Fork, or Grouse Creek Bands of Indians;

(3) "Hoopa Valley Reservation" means the reservation described in section 2(b) of this Act [25 USC § 1300i-1(b)]:

(4) "Hoopa Valley Tribe" means the Hoopa Valley Tribe, organized under the constitution and amendments approved by the Secretary on November 20 1933, September 4, 1952, August 9, 1963, and August 18, 1972;

(5) "Indian of the Reservation" shall mean any person who meets the criteria to qualify as an Indian of the Reservation as established by the United States Court of Claims in its March 31, 1982, May 17, 1987, and March 1, 1988, decisions in the case of Jesse Short et al. v. United States, (Cl. Ct. No. 102-63);

(6) "Joint reservation" means the area of land defined as

Hoopa Valley Reservation in section 2(b) and the Yurok Reservation in section 2(c) of this Act [25 USC § 1300i-1(b), (c)].

(7) "Karuk Tribe" means the Karuk Tribe of California, organized under its constitution on April 6, 1985;

(8) "Secretary" means the Secretary of the Interior;

(9) "Settlement Fund" means the Hoopa-Yurok Settlement Fund established pursuant to section 4 [25 USC § 1300i-3];

(10) "Settlement Roll" Means the final roll prepared and published in the Federal Register by the Secretary pursuant to section 5 [25 USC § 1300i-4];

(11) "Short cases" means the cases entitled Jesse Short et al. v. United States, (Cl. Ct. No. 102-63); Charlene Ackley v. United States, (Cl. Ct. No. 460-78); Bret Aanstadt v. United States, (Cl. Ct. No. 146-85L); and Norman Giffen v. United States, (Cl. Ct. No. 746-85L);

(12) "Short plaintiffs" means named plaintiffs in the Short cases;

(13) "Trust land" means an interest in land the title to which is held in trust by the United States for an Indian or Indian tribe, or by an Indian or Indian tribe subject to a restriction by the United States against alienation:

(14) "unallotted trust land, property, resources or rights" means those lands, property, resources, or rights reserved for Indian purposes which have not been allotted to individuals under an allotment Act;

(15) "Yurok Reservation" means the reservation described in section 2(c) of this Act [25 USC § 1300i-1(c)]; and

(16) "Yurok Tribe" means the Indian tribe which is recognized and authorized to be organized pursuant to section 9 of this Act [25 USC § 1300i-8].

(Oct. 31, 1988, P.L. 100-580, § 102 Stat. 2924.)

§ 1300i-1. Reservations; partition and additions

(a) Partition of the joint reservation. (1) Effective with the publication in the Federal Register of the Hoopa tribal resolution as provided in paragraph (2), the joint reservation shall be partitioned as provided in subsections (b) and (c).

(2)(A) The partition of the joint reservation as provided in this subsection, and the ratification and confirmation as provided by section 8 [25 USC § 1300i-7], shall not become

effective unless, within 60 days after the date of the enactment of this Act [enacted Oct. 31, 1988], the Hoopa Valley Tribe shall adopt, and transmit to the Secretary, a tribal resolution:

(i) waiving any claim such tribe may have against the United States arising out of the provisions of this Act, and
(ii) affirming tribal consent to the contribution of Hoopa Escrow monies to the Settlement Fund, and for their use as payments to the Yurok Tribe, and to individual Yuroks, as provided in this Act.

(B) The Secretary, after determining the validity of the resolution transmitted pursuant to subparagraph (A), shall cause such resolution to be printed in the Federal Register.

(b) Hoopa Valley Reservations. Effective with the partition of the joint reservation as provided in subsection (a), the area of land known as the "square" (defined as the Hoopa Valley Reservation established under section 2 of the Act of April 8, 1864 (13 Stat. 40), the Executive Order of June 23, 1876, and Executive Order 1480 of February 17, 1912) shall thereafter be recognized and established as the Hoopa Valley Reservation. The unallotted trust land and assets of the Hoopa Valley Reservation shall thereafter be held in trust by the United States for the benefit of the Hoopa Valley Tribe.

(c) Yurok Reservation. (1) Effective with the partition of the joint reservation as provided in subsection (a), the area of land known as the "extension" (defined as the reservation extension under the Executive Order of October 16, 1891, but excluding the Resighini Rancheria) shall thereafter be recognized and established as the Yurok Reservation. The unalloted trust land and assets of the Yurok Reservation shall thereafter be held in trust by the United States for the benefit of the Yurok Tribe.

(2) Subject to all valid existing rights and subject to the adoption of a resolution of the Interim Council of the Yurok Tribe as provided in section 9(d)(2) [25 USC § 1300i-8(d)(2)], all right, title, and interest of the United States -

(A) to all national forest system lands within the Yurok Reservation , and

(B) to that portion of the Yurok Experimental Forest described as Township 14 N., Range 1 E., Section 28, Lot 6: that

portion of Lot 6 east of U.S. Highway 101 and west of the Yurok Experimental Forest, comprising 14 acres more or less and including all permanent structures thereon, shall thereafter be held in trust by the United States for the benefit of the Yurok Tribe and shall be part of the Yurok Reservation.

(3)(A) Pursuant to the authority of sections 5 and 7 of the Indian Reorganization Act of June 18, 1934 (25 USC 465, 467), the Secretary may acquire from willing sellers lands or interests in land, including rights-of-way for access to trust lands, for the Yurok Tribe or its members, and such lands may be declared to be part of the Yurok Reservation.

(B) From amounts authorized to be appropriated by the Act of November 2, 1921 (42 Stat. 208; 25 USC 13), the Secretary shall use not less than $5,000,000 for the purpose of acquiring lands or interests in lands pursuant to subparagraph (A). No lands or interests in lands may be acquired outside the Yurok Reservation with such funds except lands adjacent to and contiguous with the Yurok Reservation or for purpose of exchange for lands within the reservation.

(4) The

(A) apportionment of funds to the Yurok Tribe as provided in sections 4 and 7 [25 USC §§ 1300i-3, 1300i-6];

(B) the land transfers pursuant to paragraph (2);

(C) the land acquisition authorities in paragraph (3); and

(D) the organizational authorities of section 9 shall not be effective unless and until the Interim Council of the Yurok Tribe has adopted a resolution waiving any claim such tribe may have against the United States arising out of the provisions of this Act.

(d) Boundary clarifications or corrections. (1) The boundary between the Hoopa Valley Reservation and the Yurok Reservation, after the partition of the joint reservation as provided in this section, shall be the line established by the Bissel-Smith survey.

(e) Management of the Yurok Reservation. The Secretary shall be responsible for the management of the unallotted trust land and assets of the Yurok Reservation, until such time as the

Yurok Tribe has been organized pursuant to section 9 [25 USC § 1300i-8]. Thereafter, those lands and assets shall be administered as tribal trust land and the Yurok reservation governed by the Yurok Tribe as other reservations are governed by the tribes of those reservations.

(f) Criminal and civil jurisdiction. The Hoopa Valley Reservation and Yurok Reservation shall be subject to section 1360 of title 28, United States Code; section 1162 of title 18, United States Code, and section 403(a) of the Act of April 11, 1968 (82 Stat. 79; 25 USC 1323(a)).

(Oct. 31, 1988, P.L. 100=580, § 2, 102 Stat. 2925.)

§ 1300i-2. Preservation of short cases

Nothing in this Act shall affect, in any manner, the entitlement established under decisions of the United States Claims Court in the Short cases or any final judgment which may be rendered in those cases.

(Oct. 31, 1988, P.L. 100-580, § 102 Stat. 2927)

§ 1300i-3. Hoopa-Yurok Settlement Fund

(a) Establishment (1) There is hereby, established the Hoopa-Yurok Settlement Fund. Upon enactment of this Act [enacted Oct. 31, 1988], the Secretary shall cause all the funds in the escrow funds, together with all accrued income thereon, to be deposited into the Settlement Fund.

(2) Until the distribution is made to the Hoopa Valley Tribe pursuant to section (c), the Secretary may distribute to the Hoopa Valley Tribe, pursuant to the provision of title I of the Department of the Interior and related Agencies Appropriations Act, 1985, under the heading "Bureau of Indian Affairs" and subheading "Tribal Trust Funds" at 98 Stat. 1849 (25 USC 123c), not to exceed $3,500,000 each fiscal year out of the income or principal of the Settlement Fund for tribal, non per capita purposes; Provided, however, That the Settlement Fund apportioned under subsections (c) and (d) shall be calculated without regard to this subparagraph, but any amounts distributed under this subparagraph shall be deducted from the payment to the Hoopa Valley Tribe pursuant to subsection (c).

(3) Until the distribution is made to the Yurok Tribe

pursuant to section (d), the Secretary may, in addition to providing Federal funding, distribute to the Yurok Transition Team, pursuant to provision of title I of the Department of the Interior and Related Agencies Appropriation Act, 1985, under the heading "Bureau of Indian Affairs: and subheading "Tribal Trust Funds" at 98 Stat. 1849 (25 USC 123c), not to exceed $500,000 each fiscal year out of the income and principal of the Settlement Fund for tribal, non per capita purposes: Provided, however, That the Settlement Fund apportioned under subsections (c) and (d) shall be calculated without regard to this subparagraph, but any amounts distributed under this subparagraph shall be deducted from the payment to the Yurok Tribe pursuant to subsection (d).

(b) Distribution; investment. The Secretary shall make distribution from the Settlement Fund as provided in this Act and, pending payments under section 6 [25 USC § 1300i-5] and dissolution of the fund as provided in section 7 [25 USC § 1300i-6], shall invest and administer such fund as Indian trust funds pursuant to the first section of the Act of June 24, 1938 (52 Stat. 1037; 25 USC 162a).

(c) Hoopa Valley Tribe Portion. Effective with the publication of the option election date pursuant to section 6(a)(4) [25 USC § 1300i-5(a)(4)], the Secretary shall immediately pay out of the Settlement Fund into a trust account for the benefit of the Hoopa Valley Tribe a percentage of the Settlement Fund which shall be determined by dividing the number of enrolled members of the Hoopa Valley Tribe as of the date of the promulgation of the Settlement Roll, including any persons enrolled pursuant to section 6 [25 USC § 1300i-5], by the sum of the number of such enrolled Hoopa Valley tribal members and the number of persons on the Settlement Roll.

(d) Yurok Tribe portion. Effective with the publication of the option election date pursuant to section 6(a)(4)]25 USC § 1300i-5(a)(4)], the Secretary shall pay out of the Settlement Fund into a trust account for the benefit of the Yurok Tribe a percentage of the Settlement Fund which shall be determined by dividing the number of persons on the Settlement Roll electing the Yurok Tribal Membership Option pursuant to section 6(c) [25 USC § 1300i-5(c)] by the sum of the number of

the enrolled Hoopa Valley tribal members established pursuant to subsection (c) and the number of persons on the Settlement Roll, less any amount paid out of the Settlement Fund pursuant to section 6(c)(3) [25 USC § 1300i-5(c)(3)].

(e) Federal share. There is hereby authorized to be appropriated the sum of $10,000,000 which shall be deposited into the Settlement Fund after the payments are made pursuant to subsections (c) and (d) and section 6(c). The Settlement Fund, including the amount deposited pursuant to this subsection and all income earned subsequent to the payments made pursuant to subsections (c) and (d) and section 69c), shall be available to make the payments authorized by section 6(d) [25 USC § 1300i-5(d)].

(Oct. 31, 1988, P.L. 100-580, § 4, 102 Stat. 2927.)

§ 1300i-4. Hoopa-Yurok settlement roll

(a) Preparation; eligibility criteria. (1) The Secretary shall pre-prepare a roll of all persons who can meet the criteria for eligibility as an Indian of the Reservation and-

(A) who were born on or prior to, and living upon, the date of enactment of this Act [enacted Oct. 31, 1988];

(B) who are citizens of the United States; and

(C) who were not, on August 8, 1988, enrolled members of the Hoopa Valley Tribe.

(2) The Secretary's determination of eligibility under this subsection shall be final except that any Short plaintiff determined by the United States Claims Court to be an Indian of the Reservation shall be included on the Settlement Roll if they meet the other requirements of this subsection and any Short plaintiff determined by the United States Claims Court not to be an Indian of the Reservation shall not be eligible for inclusion on such roll. Children under age 10 on the date they applied for the Settlement Roll who have lived all their lives on the Joint Reservation or the Hoopa Valley or Yurok Reservations, and who otherwise meet the requirements of this section except they lack 10 years of Reservation residence, shall be included on the Settlement Roll.

(b) Right to apply; notice. Within thirty days after the date of enactment of this Act [enacted Oct. 31, 1988], the Secretary

shall give such notice of the right to apply for enrollement as provided in subsection (a) as he deems reasonable except that such notice shall include, but shall not be limited to -

(1) actual notice by registered mail to every plaintiff in the Short cases at their last known address;

(2) notice to the attorneys for such plaintiffs; and

(3) publication in newspapers of general circulation in the vicinity of the Hoopa Valley Reservation and elsewhere in the State of California.

Contemporaneous with providing the notice required by this subsection, the Secretary shall publish such notice in the Federal Register.

(c) Application deadline. The deadline for application pursuant to this section shall be established at one hundred and twenty days after the publication of the notice by the Secretary in the Federal Register as required by subsection (b).

(d) Eligibility determination; final roll. (1) The Secretary shall make determinations of eligibility of applicants under this section and publish in the Federal Register the final Settlement Roll of such persons one hundred and eighty days after the date established pursuant to subsection (c).

(2) The Secretary shall develop such procedures and times as may be necessary for the consideration of appeals from applicants not included on the roll published pursuant to paragraph (1). Successful appellants shall be added to the Settlement Roll and shall be afforded the right to elect options as provided in section 6 [25 USC § 1300i-5], with any payments to be made to such successful appellants out of the remainder of the Settlement Fund after payments have been made pursuant to section 6(d) [25 USC § 1300i-5(d)] and prior to division pursuant to section 7 [25 USC § 1300i-6].

(3) Persons added to the Settlement Roll pursuant to appeals under this subsection shall not be considered in the calculations made pursuant to section 4 [25 USC § 1300i-3].

(4) For the sole purpose of preparing the Settlement Roll under this section, the Yurok Transition Team and the Hoopa Valley Business Council may review applications, make recommendations which the Secretary shall accept unless conflicting or erroneous, and may appeal the Secre-

retary's decisions concerning the Settlement Roll. Full diclosure of relevant records shall be made to the Team and to the Council notwithstanding any other provision of law.

(3) Effect of exclusion from roll. No person whose name is not included on the Settlement Roll shall have any interest in the tribal, communal, or unallotted land, property, resources, or rights within, or appertaining to, the Hoopa Valley Tribe, the Hoopa Valley Reservation, the Yurok Tribe, or the Yurok Reservation or in the Settlement Fund unless such person is subequently enrolled in the Hoopa Valley Tribe or the Yurok Tribe under the membership criteria and ordinances of such tribes.

(Oct. 31, 1988, P.L. 100-580, § 5, 102 Stat. 2928; May 24, 1990, P.L. 101-301, § 9(1), (2), 104 Stat. 210.)

§ 1300i-5. Election of settlement options.

(a) Notice of settlement options. (1) Within sixty days after the publication of the Settlement Roll as provided in section 5(d) [25 USC § 1300i-4(d)], the Secretary shall give notice by certified mail to each person eighteen years or older on such roll of their right to elect one of the settlement options provided in this section.

(2) The notice shall be provided in easily understood language, but shall be as comprehensive as possible and shall provide an objective assessment of the advantages and disadvantages of each of the options offered. The notice shall also provide information about the counseling services which will be made available to inform individuals about the respective rights and benefits associated with each option presented under this section. It shall also clarify that on election the Lump Sum Payment option requires the completion of a sworn affidavit certifying that the individual has been provided with complete information about the effects of such as election.

(3) With respect to minors on the Settlement Roll the notice shall state that minors shall be deemed to have elected the option of section 6(c) [subsec. (c) of this section], except that if the parent or guardian furnishes proof satisfactory to the Secretary that a minor is an enrolled member of a tribe that prohibits members from enrolling in other tribes, the parent or guardian shall make the election for such minor.

A minor subject to the provisions of section 6(c) [subsec. (c) of this section] shall, notwithstanding any other law, be deemed to be a child of a member of an Indian tribe regardless of the option elected pursuant to this Act by the minor's parent. With respect to minors on the Settlement Roll whose parent or guardian is not also on the roll, notice shall be given to the parent or guardian of such minor. The funds to which such minors are entitled shall be held in trust by the Secretary until the minor reaches age 18. The Secretary shall notify and provide payment to such person including all interest accrued.

(4)(A) The notice shall also establish the date by which time the election of an option under this section must be made. The Secretary shall establish that date as the date which is one hundred and twenty days after the date of the publication in the Federal Register as required by section 5(d) [25 USC § 1300i-4(d)].

(B) Any person on the Settlement Roll who has not made an election by the date established pursuant to subparagraph (A) shall be deemed to have elected the option provided in subsection (c)>

(b) Hoopa tribal membership option. (1) Any person on the Settlement Roll, eighteen years or older, who can meet any of the enrollment criteria of the Hoopa Valley Tribe set out in the decision of the United States Court of Claims in its March 31, 1982, decision in the Short case (No. 102-63) as "Schedule A", "Schedule B", or "Schedule C" and who -

(A) maintained a residence on the Hoopa Valley Reservation on the date of enactment of this Act [enacted Oct. 31, 1988];

(B) had maintained a residence on the Hoopa Valley Reservation at any time within the five year period prior to the enactment of this Act [enacted Oct. 31, 1988]; or

(C) owns an interest in real property on the Hoopa Valley Reservation on the date of enactment of this Act [enacted Oct. 31, 1988],

may elect to be, and, upon such election, shall be entitled to be, enrolled as a full member of the Hoopa Valley Tribe.

(2) Notwithstanding any provision of the constitution, ordi-

nances or resolutions of the Hoopa Valley Tribe to the contrary, the Secretary shall cause any entitled person electing to be enrolled as a member of the Hoopa Valley Tribe to be so enrolled and such person shall thereafter be entitled to the same rights, benefits, and privileges as any other member of such tribe.

(3) The Secretary shall determine the quantum of "Indian blood" or "Hoopa Indian blood", if any, of each person enrolled in the Hoopa Valley Tribe under this subsection pursuant to the criteria established in the March 31, 1982, decision of the United States Court of Claims in the case of Jesse Short et al. v. United States, (Cl. Ct. No. 102-63).

(4) Any person making an election under this subsection shall no longer have any right or interest whatsoever in the tribal, communal, or unallotted land, property, resources, or rights within, or appertaining to, the Yurok Indian Reservation or the Yurok Tribe or in the Settlement Fund.

(c) **Yurok tribal membership options.** (1) Any person on the Settlement Roll may elect to become a member of the Yurok Tribe and shall be entitled to participate in the organization of such tribe as provided in section 9 [25 USC § 1300i-8].

(2) All persons making an election under this subsection shall form the base roll of the Yurok Tribe for purposes of organization pursuant to section 9 [25 USC § 1300i-8] and the Secretary shall determine the quantum of "Indian blood" if any pursuant to the criteria established in the March 31, 1982, decision of the United States Court of Claims in the case of Jesse Short et al. v. United States, (Cl. Ct. No. 102-63).

(3) The Secretary, subject to the provisions of section 7 of the Act of October 19, 1973 (87 Stat. 466), as amended (25 USC 1407), shall pay to each person making an election under this subsection, $5,000 out of the Settlement Fund for those persons who are, on the date established pursuant to section 6(a)(4) [subsec. (a)(4) of this section], below the age of 50 years, and $7,500 out of the Settlement Fund for those persons who are, on that date, age 50 or older.

(4) Any person making an election under this subsection shall no longer have any right or interest whatsoever in the tribal, communal, or unallotted land, property, resources, or

rights within, or appertaining to, the Hoopa Valley Reservation or the Hoopa Valley Tribe or, except to the extent authorized by paragraph (3), in the Settlement Fund. Any such person shall also be deemed to have granted to members of the Interim Council established under section 9 [25 USC § 1300i-8] an irrevocable proxy directing them to approve a proposed resolution waiving any claim the Yurok Tribe may have against the United States arising out of the provisions of this Act, and granting tribal consent as provided in section 9(d)(2) [25 USC § 1300i-8(d)(2)].

(d) Lump sum payment option. (1) Any person on the Settlement Roll may elect to receive a lump sum payment from the Settlement Fund and the Secretary shall pay to each such person the amount of $15,000 out of the Settlement Fund: Provided, That such individual completes a sworn affidavit certifying that he or she has been afforded the opportunity to participate in counseling which the Secretary, in consultation with the Hoopa Tribal Council or Yurok Transition Team, shall provide. Such counseling shall provide a comprehensive explanation of the effects of such election on the individual making such election, and on the tribal enrollment rights of that persons children and descendants who would otherwise be eligible for membership in either the Hoopa or Yurok Tribe.

(2) The option to elect a lump sum payment under this section is provided solely as a mechanism to resolve the complex litigation and other special circumstances of the Hoopa Valley Reservation and the tribes of the reservation, and shall not be construed or treated as a precedent for any future legislation.

(3) Any person making an election to receive, and having received, a lump sum payment under this subsection shall not thereafter have any interest or right whatsoever in the tribal, communal, or unallotted land, property, resources, or rights within, or appertaining to, the Hoopa Valley Reservation, the Hoopa Valley Tribe, the Yurok Reservation, or the Yurok Tribe or; except authorized by paragraph (1), in the Settlement Fund.

(Oct. 31, 1988, P.L. 100-580, § 6, 102 Stat. 2929.)

§ 1300i-6. Division of settlement fund remainder

(a) Any funds remaining in the Settlement Fund after the payments authorized to be made therefrom by subsections (c) and (d) of section 6 [25 USC § 1300i-5(c), (d)] and any payments made to successful appellants pursuant to section 5(d) [25 USC § 1300i-4(d)] shall be paid to the Yurok Tribe and shall be held by the Secretary in trust for such tribe.

(b) Funds divided pursuant to this section and any funds apportioned to the Hoopa Valley Tribe and the Yurok Tribe pursuant to subsections (c) and (d) of section 4 [25 USC § 1300i-3(c), (d)] shall not be distributed per capita to any individual before the date which is 10 years after the date on which the division is made under this section: Provided, however, That if the Hoopa Valley Business Council shall decide to do so it may distribute from the funds apportioned to it a per capita payment of $5,000 per member, pursuant to the Act of August 2, 1983 (25 USC 117a et seq.).

(Oct. 31, 1988, P.L. 100-580, § 7, 102 Stat. 2931.)

§ 1300i-7. Hoopa Valley Tribe; confirmation of status

The existing govening [governing] documents of the Hoopa Valley Tribe and the governing body established and elected thereunder, as heretofore recognized by the Secretary, are hereby ratified and confirmed.

(Oct. 31, 1988, P.L. 100-580 § 8, Stat. 2932)

§ 1300i-8. Recognition and organization of the Yurok Tribe

(a) Yurok Tribe. (1) Those persons on the Settlement Roll who made a valid election pursuant to subsection (c) of section 6 [25 USC § 1300i-5(c)] shall constitute the base membership roll for the Yurok Tribe whose status as an Indian tribe, subject to the adoption of the Interim Council resolution as required by subsection (d)(2), is hereby ratified and confirmed.

(2) The Indian Reorganization Act of June 18, 1934 (48 Stat. 984; 25 USC 461 et seq.), as amended, is hereby made applicable to the Yurok Tribe and the tribe may organize under such Act as provided in this section.

(3) Within thirty days (30) after the enactment of this Act [enacted Oct. 31, 1988] the Secretary, after consultation

with the appropriate committees of Congress, shall appoint five (5) individuals who shall comprise the Yurok Transition Team which, pursuant to a budget approved by the Secretary, shall provide counseling and assistance, shall promote communication with potential members of the Yurok Tribe concerning the provisions of this Act, and shall study and investigate programs, resources, and facilities for consideration by the Interim Council. The Yurok Transition Team may receive grants and enter into contracts for the purpose of carrying out his section and section 10(a) of this Act [25 USC § 1300i-9(a)]. Such grants and contracts shall be transferred to the Yurok Interim Council upon its organization. Any property acquired for or on behalf of the Yurok Transition Team shall be held in the name of the Yurok Tribe.

(b) Interim Council; establishment. There shall be established an Interim Council of the Yurok Tribe to be composed of five members. The Interim Council shall represent the Yurok Tribe in the implementation of provisions of this Act, including the organizational provisions of this section, and subject to subsection (d) shall be governing body of the tribe until such time as a tribal council is elected under a constitution adopted pursuant to subsection (e).

(c) General council; election of Interim Council. (1) Within 30 days after the date established pursuant to section 6(a)(4) [25 USC § 1300i-5(a)(4)], the Secretary shall prepare a list of all persons eighteen years of age or older who have elected the Yurok Tribal Membership Option pursuant to section 6(c) [25 USC § 1300i-5(c)], which persons shall constitute the eligible voters of the Yurok Tribe for the purposes of this section, and shall provide written notice to such persons of the date, time, purpose, and order of procedure for the general council meeting to be schedule pursuant to paragraph (2) for the consideration of the nomination of candidates for election to the Interim Council.

(2) Not earlier than 30 days before, nor later than 45 days after, the notice provided pursuant to paragraph (1), the Secretary shall convene a general council meeting of the eligible voters of the Yurok Tribe on or near the Yurok Reservation, to be conducted under such order of procedures as

the Secretary determines appropriate, for the nomination of candidates for election of members of the Interim Council. No person shall be eligible for nomination who is not on the list prepared pursuant to this section.

(3) Within 45 days after the general council meeting held pursuant to paragraph (2), the Secretary shall hold an election by secret ballot, with absentee balloting and write-in voting to be permitted, to elect the five members of the Interim Council from among the nominations submitted to him from such general council meeting. The Secretary shall assure that notice of the time and place of such election shall be provided to eligible voters at least fifteen days before such election.

(4) The Secretary shall certify the results of such election and, as soon as possible, convene an organizational meeting of the newly-elected members of the Interim Council and shall provide such advice and assistance as may be necessary for such organization.

(d) **Interim Council; authorities and dissolution.** (1) The Interim Council shall have no powers other than those given to it by this Act.

(2) The Interim Council shall have full authority to adopt a resolution -

(i) waiving any claim the Yurok Tribe may have against the United States arising out of the provision of this Act; and

(ii) affirming tribal consent to the contribution of Yurok Escrow monies to the Settlement Fund, and for their use as payments to the Hoopa Tribe, and to individual Hoopa members, as provided in this Act, and

(iii) to receive grants from, and enter into contracts for, Federal programs, including those administered by the Secretary and the Secretary of Health and Human Services, with respect to Federal services and benefits for the tribe and its members.

(3) The Interim Council shall have such other powers, authorities, functions, and responsibilities as the Secretary may recognize, except that any contract or legal obligation that would bind the Yurok Tribe for a period in excess of two years from the date of the certification of the election by the Secretary shall be subject to disapproval and cancellation by the Secretary if the Secretary determines that such a contract or legal obligation is unnecessary to

improve housing conditions of members of the Yurok Tribe, or to obtain other rights, privileges or benefits that are in the long-term interest of the Yurok Tribe.

(4) The Interim Council shall appoint, as soon as practical, a drafting committee which shall be responsible, in consultation with the Interim Council, the Secretary and members of the tribe, for the preparation of a draft constitution for submission to the Secretary pursuant to subsection (e).

(5) The Interim Council shall be dissolved effective with the election and installation of the initial tribe governing body elected pursuant to the constitution adopted under subsection (e) or at the end of two years after such installation, whichever occurs first.

(e) Organization of Yurok Tribe. Upon written request of the Interim Council or the drafting committee and the submission of a draft constitution as provided in paragraph (4) of subsection (d), the Secretary shall conduct an election, pursuant to the provisions of the Indian Reorganization Act of June 18, 1934 (25 USC 461 et seq.) and rules and regulations promulgated thereunder, for the adoption of such constitution and, working with the Interim Council, the election of the initial tribal governing body upon the adoption of such constitutions.

(Oct 31, 1988, P.O. 100-580, § 9, 102 Stat. 2932; oct. 23, 1989, P.L. 101-121, Title III, § 315, 103 Stat. 744; May 24, 1990, P.L. 101-301, § 9(3), 104 Stat. 211.)

§ 1300i-9. Economic development

(a) Plan for economic self-sufficiency. The Secretary shall-

(1) enter into negotiations with the Yurok Transition Team and the Interim Council of the Yurok Tribe with respect to establishing a plan for economic development for the tribe; and

(2) in accordance with this section and not later than two years after the date of enactment of this Act [enacted Oct. 31, 1988], develop such a plan.

(3) upon the approval of such plan by the Interim Council or tribal governing body (and after consultation with the State and local officials pursuant to subsection (b) of this section), the Secretary shall submit such plan to the Congress.

the Secretary by any party named in paragraph (1).
(Oct. 31, 1988, P.L. 100-580, § 10, 102 Stat. 2934.)

§ 1300i-10. Special considerations

(a) Estate for Smokers family. The 20 acre assignment on the Hoopa Valley Reservation made by the Hoopa Area Field Office of the Bureau of Indian Affairs on August 25, 1947, to the Smokers family shall continue in effect and may pass by descent or devise to any blood relative or relative of one-fourth or more Indian blood of those family members domiciled on the assignment on the date of enactment of this Act [enacted Oct. 31, 1988].

(b) Rancheria merger with Yurok Tribe. If a majority of the adult members of any of the following Rancherias at Resighini, Trinidad, or Big Lagoon, vote to merge with the Yurok Tribe in an election which shall be conducted by the Secretary within ninety days after the date of enactment of this Act [enacted Oct. 31, 1988], the tribes and reservations of those rancherias so voting shall be extinguished and the lands and members of such reservations shall be part of the Yurok Reservation with the unallotted trust land therein held in trust by the United States for the Yurok Tribe: Provided, However, That the existing governing documents and the elected governing bodies of any rancherias voting to merge shall continue in effect until the election of the Interim Council pursuant to section 9 [25 USC § 1300i-8]. The Secretary shall publish in the Federal Register a notice of the effective date of the merger.

(c) Preservation of leasehold and assignment rights of Rancheria residents. Real property on any rancheria that merges with the Yurok Reservation pursuant to subsection (b) that is, on the date of enactment of this Act [enacted Oct. 31, 1988], held by any individual under a lease shall continue to be governed by the terms of the lease, and any land assignment existing on the date of the enactment of this Act [enacted Oct. 31, 1988], shall continue in effect and may pass by descent or devise to any blood relative or relatives of Indian blood of the assignee.
(Oct. 31, 198, P.L. 100-580, § 11, 102 Stat. 2935.)

§ 1300i-11. Limitations of actions; waiver of claims

(a) Any claim challenging the partition of the joint reservation pursuant to section 2 [25 USC § 1300i-1] or any other provision of this Act as having effected a taking under the fifth amendment of the United States Constitution or as otherwise having provided inadequate compensation shall be brought, pursuant to 28 USC 1491 or 28 USC 1505, in the United States Claims Court. The Yurok Transition Team, or any individual thereon, shall not be named as a defendant or otherwise joined in any suit in which a claim is made arising out of this subsection:

(b)(1) Any such claim by any person or entity, other than the Hoopa Valley Tribe or the Yurok Tribe, shall be forever barred if not brought within the later of 210 days from the date of the partition of the joint reservation as provided in section 2 [25 USC § 1300i-i] or 120 days after the publication in the Federal Register of the option election date as required by section 6(a)(4) [25 USC § 1300i-5(a)(4)].

(2) Any such claim by the Hoopa Valley Tribe shall be barred 180 days after the date of enactment of this Act [enacted Oct. 31, 1988] or such earlier date as may be established by the adoption of a resolution waiving such claims pursuant to section 2(a)(2) [25 USC § 1300i-1(a)(2)].

(3) Any such claim by the Yurok Tribe shall be barred 180 days after the general council meeting of the Yurok Tribe as provided in section 9 [25 USC § 1300i-8] or such earlier date as may be established by the adoption of a resolution waiving such claims as provided in section 9(d)(s) [25 USC § 1300i-8(d)(2)].

(c)(1) The Secretary shall prepare and submit to the Congress a report describing the final decision in any claim brought pursuant to subsection (b) against the United States or its officers, agencies, or instrumentalities.

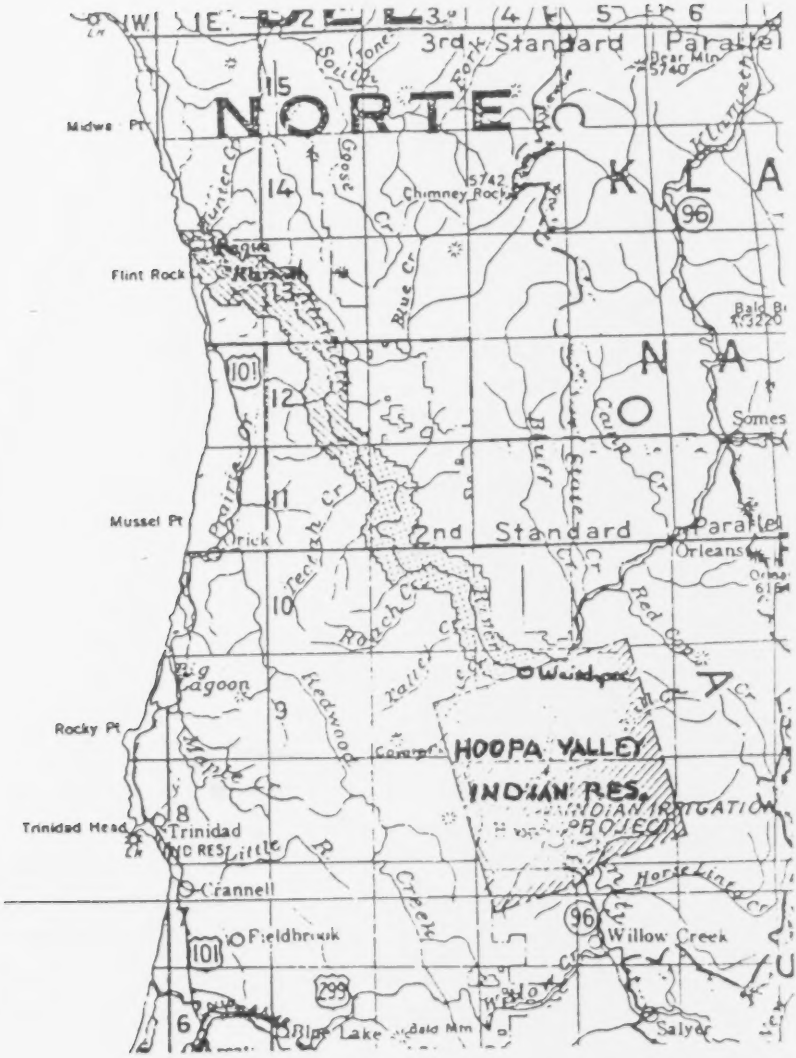
(2) Such report shall be submitted no later than180 days after the entry of final judgement in such litigation. The report shall include any recommendations of the Secretary for actin by Congress, including, but not limited to, any supplemental funding proposals necessary to implement the terms of this Act and any modifications to the resource and management authorities established by this Act. Notwithstanding the provisions of 28 USC 2517, any judg-

ment entered against the United States shall not be paid for 180 days after the entry of judgment; and, if the Secretary of the Interior submits a report to Congress pursuant to this section, then payment shall be made no earlier than 120 days after submission of the report.

(Oct. 31, 1988, P.L. 100-580, § 14, 102 Stat. 2936; May 24, 1990, P.L. 101-301, § 9(4), 104 Stat. 211.)

APPENDIX E

Scale: 1 inch = 12 miles



BEST AVAILABLE COPY